MALAYSIAN REPORTS

DORAISAMY v. GOVERNMENT OF MALAYSIA

[F.C. (Gill C.J. (Malaya), Raja Azlan Shah & Ong Hock Sim F.JJ.) October 27, 1977 & March 18, 1982]
[Ipoh – Federal Court Civil Appeal No. 100 of 1975]

Administrative Law – Claim that person had been prematurely retired – Statement as to age recorded at time of joining service – Claim that birth date wrongly recorded – Claim dismissed – Appeal – Pensions Ordinance, 1951, s. 10 – Federal Constitution, art. 136.

In this case the respondent had required the appellant to retire from the service of the Government on the ground that he had attained the age of 55 years. The respondent took the appellant's birth date as stated in the appellant's record of service. The Director of Public Service had refused a request for amendment of the recorded birth date. The appellant alleged that his birth date was wrongly recorded and brought an action for wrongful termination of his service alleging that the respondent had contravened section 10 of the Pensions Ordinance and Article 136 of the Federal Constitution and the rule of natural justice. Wan Hamzah J. dismissed the claim, following the decision of the Federal Court in *General Manager, Keretapi Tanah Melayu* v. *Verriah*.(1) The appellant appealed.

Held, dismissing the appeal: the learned trial judge was correct in dismissing the claim for the reasons set out in his judgment.

Case referred to:–

(1) *General Manager, Keretapi Tanah Melayu* v. *Verriah* [1975] 1 M.L.J. 123.

HIGH COURT.

Wan Hamzah J.: The defendant required the plaintiff to retire on May 9, 1970 from his service with the defendant. The defendant did so purportedly under section 10 of the Pensions Ordinance 1951 on the ground that the plaintiff attained the age of 55 years on that date. The defendant took the plaintiff's birth date as stated in the plaintiff's record of service i.e. May 9, 1915, for the purpose of computing the plaintiff's age. The plaintiff alleges that his birth date has been wrongly recorded in the record of service and that the correct date on which he was born was October 7, 1927 and he had not reached the age of 55 years on May 9, 1970. Therefore the plaintiff brings this suit against the defendant for wrongful termination of his service, alleging that the defendant has contravened section 10 of that Ordinance and Article 136 of the Constitution and the rule of natural justice. The plaintiff prays for a declaration that the termination of his service was void and that he is still a member of the staff of the Telecommunications Department, and he also asks for an order than an account be taken of emoluments due to him from the date of the termination of his service to the date of reinstatement.

The defendant pleads that the plaintiff on joining the Telecommunications Department gave his birth date as May 9, 1915 and therefore reached the age of 55 years on May 9, 1970. The defendant pleads further that the plaintiff was required to retire in accordance with the Ordinance and Service Circular, and that in view of Article 132(2A) of the Constitution the defendant is not entitled as of right to hold office for any definite period. The defendant further pleads that Article 136 of the Constitution and the rules of natural justice do not apply to the plaintiff's retirement and in any event there has been no violation of that Article or of those rules.

From the evidence in this case it it clear that the plaintiff's birth date as recorded in his record of service at the relevant time was May 9, 1915. There is evidence to show that on being requested to approve amendment of the recorded birth date to October 7, 1927 the Director-General of Public Services refused the application. I hold that even if it was true that the plaintiff was born on October 7, 1927, he still fails in his claim. So long as his retirement age is correctly computed by taking the birth date as recorded in his record of service as the date on which he was born, it cannot be said that his retirement was wrongful as being premature. The birth date to be adopted for the purpose of computing his retirement age is the birth date as recorded in the record of service unless the Director-General of Public Services approves that the recorded birth date be altered. In effect it was what was held by the Federal Court in the case of *General Manager, Keretapi Tanah Melayu* v. *Verriah*.(1) In that case the High Court had given judgment declaring that the respondent had been prematurely and unlawfully retired before his retiring age of 55 on the erroneous ground that he had reached that age on June 25, 1971, and that his correct age on that date was 50 years. The Federal Court allowed the appeal against that judgment. In the judgment of the Federal Court it was stated *inter alia* as follows:–

"The main argument in support of the appellant's appeal before us was that the action was premature in that before commencing the action the plaintiff had not obtained approval from the Principal Establishment Officer (now known as the Director-General of Public Services) under G.O.A. 19(e) for his date of birth to be amended ...

The respondent did in fact apply to the Principal Establishment Office to have his date of birth amended and the application was clearly made under G.O.A. 19(e), but his application was turned down. He applied again with the same result. Under the General Order in question the Principal Establishment Officer has absolute discretion in the matter. If the respondent was dissatisfied with his decision in the exercise of such discretion, it was open to him to take whatever proceedings he considered appropriate against the Government. In the absence or his having failed to take any such proceedings he had no right of action against the appellant."

In view of what I have stated earlier to the effect that the plaintiff in the present case fails in any event, it is not necessary for me to make a finding as to the true date of the plaintiff's birth. The plaintiff's claim is dismissed with costs.

FEDERAL COURT.

G.T. Rajan for the appellant.

Lim Beng Choon (Senior Federal Counsel) for the respondent.

Raja Azlan Shah C.J. (Malaya) (delivering the grounds of judgment of the Court): This appeal against the judgment of the High Court dismissing the appellant's claim in this matter was heard on October 25, 1977 and at the end of argument was dismissed with costs. One of my brother judges who sat in this appeal has since passed away and the other has retired and it therefore devolves on me to give the grounds for our decision which the appellant now requests for the purpose of applying to the Privy Council for leave to appeal in *forma pauperis*.

I need say no more than that we were so convinced regarding the proper and indeed inevitable outcome of this appeal that we did not find it necessary to reserve judgment and dismissed the appeal immediately at the conclusion of the hearing as we were in complete agreement with the decision arrived at by the learned trial judge and for the reasons which appear in his judgment in reliance on the decision of this court in *General Manager, Keretapi Tanah Melayu* v. *Verriah*.(1)

Solicitors: *G.T. Rajan & Co.*

LIM ENG KAY v. JAAFAR BIN MOHAMED SAID

[F.C. (Raja Azlan Shah C.J. (Malaya), Salleh Abas F.J. & Abdoolcader J.) February 2 & March 24, 1982]
Ipoh – Federal Court Civil Appeal No. 57 of 1981]

Damages – Quantum – Brain injury and fracture of thigh and jaw bones – Size of award and public policy – Pain and suffering and loss of amenities of life – Loss of earnings – Pre-trial loss of earnings – Prospective loss of earnings – Interest – Civil Law Act, 1956, s. 11 – R.H.C. 1980, 0.42 r. 12.

In this case the respondent was injured in an accident between the motor cycle ridden by him and a motorcar driven by the appellant. He sued the appellant for general and special damages. Liability was agreed between the parties in the ratio of 90% against the appellant and 10% against the respondent. The respondent was a trained school teacher and was undergoing a course in social science at University Science Malaysia, Penang. As a result of the accident the appellant sustained a severe brain injury and fractures of the right thigh bone and jaw bone.

The learned trial judge made an award of damages as follows;

"A. *General Damages*

(i)	Pain and suffering and loss of amenities	$ 80,000.00
(ii)	Post-trial loss of earnings	$231,000.00

B. *Special Damages*

(i)	Agreed damages for repair of motor cycle and transport to and from hospitals	$ 2,300.00
(ii)	Pre-trial loss of earnings	$ 65,945.00
	TOTAL	$379,245.00

C. *Interest*

(i) Interest at 6% on $80,000 awarded for pain and suffering and loss of amenities from the date of service of the writ to the date of payment; and

(ii) interest at 3% on the total of $2,300 and $65,945 awarded as special damages from the date of accident to the date of payment."

Held: (1) the judicial warnings against the size of the award in some of the cases cannot be construed as laying down a new principle for assessing damages, but are merely intended to serve as a caution, lest the court might be moved by sympathy for an injured person to giving a higher award than would have been otherwise justified by evidence. The proper approach is therefore to avoid conjecturing into the unchartered sphere of public policy and for the appeal court to examine the award to see whether its assessment was perverse or whether it was arrived at on an incorrect principle;

(2) in this case there was no basis for the submission of the respondent that the assessment for pain and suffering and loss of amenities was low as he did not produce evidence to show that he required future care or that his life expectancy was in any way affected or that his prospect for marriage was diminished, as submitted by him;

(3) in view of the nature of the injuries to the brain and to the right leg of the respondent the award of $80,000 for pain and suffering and loss of amenities could not be said to be excessive;

(4) the finding that the respondent's pre-trial loss of earning amounted to $65,945.00 was correct in principle but his income tax liability should be taken into consideration. The sum which could be awarded as a reasonable estimate of the respondent's loss of income is therefore ($65,945.00 – $9,892.00) = $56,053.00. The award of the sum in addition to the agreed sum of $2,300 as special damages was not wrong in principle because the damages under this heading was in fact pleaded although it was incorrectly pleaded as general damages;

(5) for the assessment of future earnings the method of multiplicand times multiplier was an appropriate method and should have been adopted. On this basis, the sum that should be awarded should be $93,587.42;

(6) the court has a discretion to grant interest on the sums awarded as damages and in this case the award of interest by the learned trial judge should be upheld.

Cases referred to:–

(1) *Fletcher* v. *Autocar & Transporters Ltd.* [1968] 1 All E.R. 726, 733.
(2) *Kandalla* v. *British Airways Board* [1980] 1 All E.R. 341; 349.
(3) *Lim Poh Choo* v. *Camden and Islington Area Health Authority* [1979] 2 All E.R. 910.
(4) *Rasidin bin Partorjo* v. *Frederick Kiai* [1976] 2 M.L.J. 214.
(5) *Kow Ah Dek & Anor.* v. *K. Ratnasingam* [1981] 2 M.L.J. 24.
(6) *Jefford* v. *Gee* [1970] 1 All E.R. 1202, 1205.
(7) *Riches* v. *Westminster Bank Ltd.* [1943] 2 All E.R. 725.
(8) *Cookson* v. *Knowles* [1977] 2 All E.R. 820, 823.
(9) *Pickett* v. *British Rail Engineering Ltd.* [1979] 1 All E.R. 774.
(10) *Murtadza bin Mohamed Hassan* v. *Chong Swee Pian* [1980] 1 M.L.J. 216, 218.

FEDERAL COURT.

N.G. Sivanandan for the appellant.

Sri Ram (*Collin Goonting* with him) for the respondent.

Cur. Adv. Vult.

Salleh Abas F.J. (delivering the judgment of the Court):

I. *The Facts*

The facts in this appeal are as follows.

The respondent was a trained school teacher. He became a teacher on January 2, 1969 by joining what was then known as the Unified Teaching Service and was subsequently posted to Secondary School Tengku Idris Shah, Kapar Selangor. In 1971 he sat for the Higher School Examinations and passed. His results were not spectacular but good enough to enable him to further his studies in a local university. In the following academic session, i.e. 1972/1973 session, which began in June 1972, he enrolled as a student of University Science Penang to follow a course in social science, leading to a degree of Bachelor of Social Science. To enable him to pursue his academic studies, the Government gave him study leave from June 1, 1972 to the end of the course. For the first six months, i.e. from June 1, 1972 to December 18, 1972 he was on half-month pay leave and thereafter the leave was without pay. He also signed the usual agreement with the Government binding him to serve the Government for seven years after the completion of his academic studies.

He passed his first year examinations in 1973, although he was referred in a few subjects, but he eventually passed these subjects at a subsequent examination.

On October 13, 1973 whilst riding his motor cycle